APPENDIX A — JUDGMENT OF DIVISION "C" OF THE TWENTY-SECOND JUDICIAL DISTRICT FOR THE PARISH OF WASHINGTON OF THE STATE OF LOUISIANA FILED NOVEMBER 10, 1997

NO: 73,341 — Div. "C" — ALL CASES

22ND JUDICIAL DISTRICT
PARISH OF WASHINGTON
STATE OF LOUISIANA

IN RE: CHEMICAL RELEASE AT BOGALUSA

JUDGMENT

The Court having considered the applicable law, evidence, argument and post-hearing briefs of counsel, and for the reasons assigned this date,

IT IS ORDERED, ADJUDGED AND DECREED that there be Judgment herein in favor of the plaintiffs, and against all defendants herein, granting the Motion for Class Certification pursuant to Louisiana Code of Civil Procedure articles 591, et seq., as those articles existed at the time this suit was filed.[1]

IT IS FURTHER ORDERED that the class shall be defined as follows:

> All persons and legal entities located or residing in, owning places of business or property in, operating

1. The 1997 amendments to these articles apply only to actions filed on or after its effective date. 1997 La. Acts, No. 839, Sec. 3. The Act was approved on July 10, 1997.

businesses in, or attending school or working in, and/or who were present within the geographic area specified herein, who sustained bodily and/or personal injury, loss, property damage, as the result of an explosion, rupture, escape and/or leak or leaks of nitrogen tetroxide (N_2O_4) and their derivatives from a railway tank car, mobile truck tractor-trailers, and/or related loading/unloading piping or other structures located on the premises of Gaylord Chemical Corporation in Bogalusa, Louisiana, occurring in and during October 1995, as well as those family members of such persons who may themselves have claims arising out of injury to such persons.

The geographic boundaries of the class are defined below. The definition includes a reference to the "City Rectangle" which will be defined as the area within the smallest rectangle which will encompass all of the City Limits of Bogalusa The class boundaries will be the area within the following truncated wedge-shaped region: 1) begin at the southeast corner of the City Rectangle, and extend the line comprising the southern side of the City Rectangle until the point at which it reaches the Pearl River. 2) then follow the western bank of the Pearl River northward until reaching the northeastern most point of the boot of Louisiana; 3) from that point, draw a straight line to the confluence of Gully Creek, Upper Little Creek and Kellers Creek in Marion County, Mississippi; 4) from the confluence of those three creeks in Marion County, Mississippi, draw a straight line in a westerly direction to the

intersection of State Highway 570 and U.S. Highway 51 in Pike County, Mississippi; 5) then from the intersection of State Highway 570 and U.S. Highway 51 draw a straight line to the Southwestern corner of the City Rectangle, in Washington Parish Louisiana, 6) continue east along the southern boundary of the City Rectangle until reaching the point of beginning at the southeastern corner of the City Rectangle.

IT IS FURTHER ORDERED that the following sixteen (16) named plaintiffs be and hereby are confirmed as representatives of the class certified herein:

1. Dunaway, Joe
2. Freeman, Tyrone
3. Garie, Charlene
4. George, Jennifer
5. George, Devon
6. Hartzog, Mary Ann Molly
7. Johnson, Edward
8. King, Alberta
9. McKenzie, Kimberly
10. Parker, William
11. Shreve, Kim
12. Smith, Kara
13. Sorenson, George
14. Thomas Jr., Leon
15. Watkins, William
16. Watts, John

The Court finds that the claims of the above-named 16 plaintiffs and the claims of the class have a common character and that

the claims of the above-named plaintiffs are typical of the members of the class certified herein. The Court also finds that none of the above-named plaintiffs has any interest in the outcome of this class action litigation that is adverse to the interests of the absent members of the class and that all are willing to serve in that capacity.

IT IS FURTHER ORDERED that the following attorneys have the necessary skill, background, expertise and experience, and absence of any conflict of interest, in order to be designated class counsel and are hereby appointed as such, namely: 1. Suzette M. Peychaud Bagneris; 2. Daniel E. Bocnel, Jr., Joseph M. Bruno; 4. Roy K. Burns, Jr.; 5. Sondra A. Cheek 6. Thomas Discon; 7. James S. Farmer; 8. Calvin C. Fayard, Jr.; 9. Wendell Gauthier; 10. Reginald J. Laurent; 11. Gerald B. Meunier; 12. Stephen B. Murray; 13. Michael J. Paduda 14. Ronnie G. Penton; 15. Edward A. Robinson, III; 16. W. Hugh Sibley; 17. Vernon P. Thomas; 18. Raymond Charles Vinct, Sr.; and, 19. Jesse Wimberly.

IT IS FURTHER ORDERED and the Court finds that it is necessary and appropriate to appoint the following attorneys to continue serving as co-lead counsel on behalf of the class: Gerald E. Meunier, Ronnie G. Penton, and Reginald G. Laurent. The Court also appoints James S. Farmer to continue serving as liaison counsel on behalf of the Plaintiffs' Liaison Committee.

IT IS FURTHER ORDERED that the class should be subdivided into the following subclasses:

1. Bodily/personal injury claims (including loss of consortium); 2. Property damage claims (both real and personal

property); 3. Economic losses (including, but not limited to, lost profits, lost wages, or business interruption); 4. Evacuation damages; 5. Fear and fright claims; and 6. Punitive/exemplary damages.

IT IS FURTHER ORDERED that the punitive exemplary damages subclass shall not be a mandatory no opt-out subclass.

IT IS FURTHER ORDERED that class counsel commence to give proper notice — as required by law and consistent with this Court's Reasons for Judgement and with CMO No. 2 — to all punitive class members who live within geographic boundaries as set forth above in the definition of the class which has been certified herein after such time as this Court approves said notice.

Franklinton, Louisiana, this 10th day of November, 1997.

s/ Patricia T. Hedges
PATRICIA T. HEDGES
JUDGE, DIVISION "C"
22ND JUDICIAL DISTRICT COURT
STATE OF LOUISIANA

APPENDIX B — EXCERPTS FROM SECOND CONSOLIDATED AMENDED MASTER PETITION FILED JULY 2, 1997

22ND JUDICIAL DISTRICT COURT

NO. 73,341, "C," ALL CASES

WASHINGTON PARISH, LOUISIANA

s/ Faye Kieley

DEPUTY CLERK

FILED: July 2, 1997

IN RE CHEMICAL RELEASE AT BOGALUSA

SECOND CONSOLIDATED AMENDED MASTER PETITION

THE PETITION of certain persons of the full age of majority, more specifically referred to herein, and appearing individually and on behalf of all others similarly situated, through undersigned counsel, respectfully represents that:

1.

On October 23, 1995, at approximately 4:45 P.M., a railroad tank car ruptured and toxic and hazardous materials entered into and upon the air, land and water of the City of Bogalusa and surrounding areas in Washington Parish of the State of Louisiana. These substances had been leaking prior to October 23, 1995, while the tank car and related structures were situated at a commercial industrial facility owned and/or operated by

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Gaylord Chemical Corporation and/or Gaylord Container Corporation (hereafter, "the Gaylord facility").

2.

After the explosion and rupture of the tank car, significant amounts of the toxic and hazardous materials entered into the atmosphere, including nitrogen tetroxide, nitrogen dioxide, and nitric acid. These chemicals and associated vapors and fumes were not properly controlled, and for a period of time caused considerable injuries and damages in Bogalusa and in the surrounding areas.

3.

Nitrogen tetroxide is a hazardous material and/or substance.

4.

Nitrogen tetroxide is a toxic material and/or substance.

5.

Nitrogen dioxide is a hazardous material and/or substance.

6.

Nitrogen dioxide is a toxic material and/or substance.

7.

Nitric acid is a hazardous material and/or substance.

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8.

Nitric acid is a toxic material and/or substance.

CLASS ACTION AND PARTIES

9.

This is a class action pursuant to the provisions of Articles 591, *et seq.* of the Louisiana Code of Civil Procedure, and is instituted by the plaintiffs on their own behalf and as representative members of the class.

10.

The class sought to be certified is defined as follows:

> All persons residing in, owning places of business or property in, operating businesses in, attending school or working in, and/or who were otherwise present within, a geographical area to be determined by the Court after the submission of evidence and a hearing thereon, and who sustained bodily and/or personal injury, loss, property damage, and/or other damage, as the result of an explosion, rupture, escape and/or leak or leaks of nitrogen tetroxide (N204) and its derivatives, from a railroad tank car, mobile truck tanker-trailers, and/or related loading/ unloading piping or other structures on the premises of Gaylord Chemical Corporation in Bogalusa, Louisiana, occurring in and during October 1995, as well as those family members who may have claims arising out of injury to such persons.

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11.

Plaintiffs are entitled to have this case maintained as a class action on the following grounds:

(a) The persons or entities constituting the class are so numerous that joinder of all parties is impractical;

(b) As between the named class representatives and the unnamed members of the class, there exists a common character among the rights sought to be enforced through these proceedings;

(c) The named plaintiffs are all members of the class and are suited to provide adequate representation for the unnamed class members;

(d) A majority of the unnamed class members do not have the resources or substantial interest required to prosecute their claims individually;

(e) The common questions and issues of law and fact involved in this matter predominate over questions affecting only individual class members;

(f) Any defense to defendants' liability would be applicable generally to all claims presented by the members of the class;

(g) Prosecution of separate actions by individual class members would create a serious risk of incomplete or inconsistent adjudications, which may prejudicially affect the claims of other class members;

(h) The class action is a superior procedural vehicle for this litigation, and will achieve the primary objectives

of the class action device, including economies of time, effort, and expense, without undue prejudice, and insuring procedural fairness to the parties;

(i) The named plaintiffs are represented by skilled attorneys who are experienced in the handling of mass tort class actions and who may be expected to handle this action in a competent, expeditious, and economical manner, in the best interests of all class members;

(j) The class action procedure is necessary to avoid costly, redundant litigation of the same issues; and

(k) The determination of fault, the appropriateness of exemplary damages, and the bases for determining the amount of compensatory and exemplary damages, may be made in a class action without the necessity of proof at that time as to the quantum for individual plaintiffs, thereby establishing guidelines for settlement and/or subsequent trials in individual cases, as necessary.

12.

Specifically, the named plaintiffs and proposed class representatives herein are:

(a) Darrell Darden, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss, and damages associated with evacuation from his home, as a result of the exposure to toxic and hazardous materials;

(b) Jennifer and Gary George, individually and as the parents and natural tutrix/tutor of their minor son, Devon George, who suffered, among other things, physical and emotional injuries, resulting in expenses for medical treatment as well as the disruption of his academic activities, as a result of the exposure to toxic and hazardous materials;

(c) Mary Anna "Molly" Hartzog, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss, and damages associated with evacuation from her home, as a result of the exposure to toxic and hazardous materials;

(d) Edward Johnson, a person of the full age of majority and an inmate at The Washington Correctional Institute in Angie, Louisiana, who suffered physical as well as emotional and mental injuries as a result of the exposure to toxic and hazardous materials;

(e) Kim Shrieve, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss, and damages associated with evacuation from her home, as a result of the exposure to toxic and hazardous materials;

(f) George Sorenson, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, and employed at The Washington Correctional Institute in Angie, Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss, and damages as a result of the exposure to toxic and hazardous materials;

(g) Douglas Watkins, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss, and damages associated with evacuation from his home, as a result of the exposure to toxic and hazardous materials;

(h) John Watts, a person of the full age of majority residing in the State of Mississippi but present in the City of Bogalusa at the time of the events herein, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, and economic loss as a result of the exposure to toxic and hazardous materials;

(i) William Reed Holloway, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, economic loss, medical expenses, and damages associated with evacuation from his home, as a result of the exposure to toxic and hazardous materials:

(j) John Sumurall, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, economic loss, medical expenses, and damages associated with evacuation from his home, as a result of the exposure to toxic and hazardous materials;

(k) Leon Thomas, a person of the fall age of majority residing in the Parish of Washington, State of Louisiana, who suffered and incurred physical injuries, mental and emotional injuries, economic loss, medical expenses, and damages associated with evacuation from his home, as a result of the exposure to toxic and hazardous materials;

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(l) A legally-appointed Representative of the Estate of Al Garic, to recover both survival and wrongful death damages for the pre-terminal injuries and wrongful death of Al Garic as a result of exposure to toxic and hazardous materials;

(m) Kimberly and Bradley Seal, individually and as the natural tutrix/tutor and representatives of the estate of their minor daughter, Fontana Seal, to recover damages for the pre-terminal injuries and wrongful death of Fontana Seal;

(n) Magic City Recording, Inc., a business located in the vicinity of Bogalusa and operated by Eugene Foster, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who and which suffered economic loss and business inconvenience as a result of the exposure to toxic and hazardous materials,

(o) Parker's Flower Co., Inc., a Louisiana corporation, owned by William Parker, a person of the full age of majority residing in the Parish of Washington, State of Louisiana, who and which suffered economic loss and business inconvenience as a result of the exposure to toxic and hazardous materials;

(p) Joe Dunaway, a person of the full age of majority, residing in the Parish of Washington, State of Louisiana, who suffered physical and emotional injuries, fear and fright, inconvenience, and expenses associated with evacuation from his home, as a result of exposure (or threatened exposure) to the toxic and hazardous materials;

(q) Alberta King, a person of the full age of majority, residing in the Parish of Washington, State of Louisiana, who suffered physical and emotional injuries, fear and fright,

inconvenience, and expenses associated with evacuation from her home, as a result of exposure (or threatened exposure) to the toxic and hazardous materials;

(r) Tyrone Freeman, a person of the full age of majority, residing in the Parish of Washington, State of Louisiana, who suffered, among other things, property damage as a result of exposure to the toxic and hazardous materials;

(s) Janene Dunaway, a person of the full age of majority, residing in the Parish of Washington, State of Louisiana, who has suffered the loss of society, consortium, nurture, and services of one or more members of her family, as a result of exposure to the toxic and hazardous materials;

(t) Kara Smith, a person of the full age of majority residing in Tylertown, Mississippi, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, and economic loss, as a result of the exposure to toxic and hazardous materials; and

(u) Elizabeth Porter Ratcliff, a person of the full age of majority residing in Jayess, Mississippi, who suffered and incurred physical injuries, mental and emotional injuries, medical expenses, economic loss and property damage, as a result of the exposure to toxic and hazardous materials.

13.

Made defendants herein are:

a) Gaylord Chemical Corporation [hereinafter, "GC"), a Delaware corporation authorized to do and doing

business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

b) Gaylord Container Corporation (hereafter, "GCC"), a Delaware corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

c) Vicksburg Chemical Company [hereafter, "VC"], a Delaware corporation doing business in the State of Louisiana, Parish or Washington, and within the jurisdiction of this Honorable Court.

d) Cedar Chemical Corporation [hereafter, "CC"], a Delaware corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

e) Union Tank Cat Company (hereafter, "UT"], a Delaware corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

f) Illinois Central Railroad Company (hereafter, "ICR"), a Delaware corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

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(g) Kansas City Southern Railway Company (hereafter, ["KCSR"], a Missouri corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

(h) Nine West Corporation (hereafter "NWC"), a Delaware Corporation, doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

(i) Trans-Resources, Inc. (hereafter "TRI"), a Delaware Corporation, doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

j) TPR Investment Associates, Inc. (hereafter "TPRI"), a Delaware Corporation, doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court; and

k) Aetna Casualty Company, [hereafter, "ACC"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

l) Agricultural Insurance Company, [hereafter, "AI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

m) American National Fire Insurance, [hereafter, "ANFI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

n) Federal Insurance Company, [hereafter, "FI"], an Indiana insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

o) RLI Insurance Company, [hereafter, "RLI"), a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

p) Reliance National Insurance Company, [hereafter, "RNI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

q) Royal Indemnity Company, [hereafter, "ROI"), a Delaware insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

r) Transportation Insurance Company [hereafter, "TI"] a foreign insurance company authorized to do and doing business in the State of Louisiana. Parish of

Washington, and within the jurisdiction of this Honorable Court

s) United National Insurance Company, [hereafter, "UNI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

t) Westchester Fire Insurance Company, [hereafter, "WFI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

u) American Excess Insurance Association, [hereafter, "AEI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

v) CAPCO Insurance Ltd., [hereafter, "CAPCO"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court; and

w) National Union Fire Insurance Company of Pittsburgh, Pennsylvania, [hereafter, "NUFI"), a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

x) CIGNA Insurance Company, [hereafter, "CIGNA"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

y) Steadfast Insurance Company, [hereafter, "SI"], a foreign insurance company authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court;

z) Reliance Insurance Company, [hereafter, "RI"], a foreign insurance company authorized to do and doing business in the state of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court; and

aa) Illinois National Insurance Company (hereafter "INI"), a foreign insurance corporation authorized to do and doing business in the State of Louisiana, Parish of Washington, and within the jurisdiction of this Honorable Court.

JURISDICTION AND VENUE

14.

There exists jurisdiction over the subject matter of this action, and jurisdiction over the person of each defendant.

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15.

Venue is proper as to each defendant.

LIABILITY

(A) JOINT, SEVERAL, AND SOLIDARY LIABILITY

16.

Liquid nitrogen tetroxide (N204) and its derivative chemical compounds, are hazardous or toxic chemicals which cause substantial, actual, and potential health hazards and detrimental consequences for human beings.

17.

Due to the highly corrosive nature of nitrogen tetroxide and its derivative chemical compounds, nitric acid (HN03) and gaseous nitrogen dioxide (N02) among others, these chemicals cause substantial, actual, and potential damage to all forms of physical property, including crops and all other forms of vegetation, plant and animal life.

18.

On and before October 23, 1995, defendants GC, GCC, VC, CC, UT, ICR, KCSR, NWC, TRI, and TPRI stored, handled, and/or transported the toxic or hazardous substance nitrogen tetroxide and its chemical derivatives to, at, and around the Gaylord facility.

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19.

At the Gaylord facility, nitrogen tetroxide is one of the materials used in the process of manufacturing dimethyl sulfoxide (DMSO) and Dimethyl Sulfide (DMS).

20.

On or before October 23, 1995, rail tank car UTLX 82329 was located at the Gaylord facility. The tank car contained liquid nitrogen tetroxide contaminated with water, forming nitric acid and other chemicals. On information and belief, rail tank car UTLX 82329 developed a leak near its loading/unloading valves, following which there occurred the explosion or rupture of the tank car. On further information and belief, the aforementioned chemicals also leaked from one or more mobile tanks and other related structures in the course of an attempted transfer of the chemicals into same.

21.

The rupture of the tank car caused an acute and catastrophic leakage of nitrogen tetroxide, nitrogen dioxide, nitric acid and other chemicals, creating an extreme risk of hazard to the persons, entities, or property situated nearby and beyond. The leak continued for more than forty-eight hours, causing dispersion of the chemicals and the damages and injuries complained of herein.

22.

Despite knowledge of the commencement and size of the leak and of the toxic and/or hazardous nature of the chemicals

involved, the Gaylord facility did not sound its alarm in the early stages of the leak to warn the public of the impending danger presented by such a substantial exposure to these toxic and hazardous chemicals. The facility also failed to warn the general public by other means.

23.

The dangers created and the damages caused by these chemicals ultimately resulted in the mandatory evacuation of much of the community of Bogalusa, and the voluntary evacuation of many persons in the surrounding communities, at considerable inconvenience, danger, and expense.

24.

Defendants GC, GCC, VC, CC, UT, ICR, KCSR, NWC, TRI, and TPRI are liable jointly, severally, and *in solido* for damages to named plaintiffs and to all members of the class they represent, pursuant to the Louisiana law of negligence, strict liability, absolute liability, product liability, and the wanton or reckless disregard for public safety in the storage, handling or transportation of a hazardous or toxic substance, all as provided for in Louisiana Civil Code Articles 667-669, 2315, 2315.3, 2316, 2317, 2322, 2324, and Louisiana Revised Statutes 9:2800-52, among others.

25.

Plaintiffs specifically contend that any law or laws sought to be applied in a way to restrict or limit defendants' solidary liability, is/are unconstitutional.

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26.

The injuries and damages described herein were caused through no fault of the plaintiffs or those whom they seek to represent, but were solely caused through the legal fault of the defendants, as itemized below.

* * *

39.

Defendants ICR and KCSR participated in transporting the offending tank car of nitrogen tetroxide to the Gaylord facility.

40.

ICR is liable to plaintiffs and other persons and entities similarly situated for negligence, imprudence, and want of skill, in the following non-exclusive particulars:

(a) Failing to properly account and prepare for the hazards attendant upon the storage, handling, and transportation of nitrogen tetroxide;

(b) Failing to discover or repair damage or defects in the tank car used to store or transport hazardous substances;

(c) Negligently inspecting or failing to properly inspect, test, maintain, or equip the tank car;

(d) Accepting from defendant KCSR and proceeding to deliver to the Gaylord facility a railroad tank car in an overweight and/or defective, condition;

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(e) Failing to use proper workmanship in the maintenance and repair of the tank car, and to assure its safe use for the storage and handling of hazardous and/or toxic substances at all times;

(f) Failing to properly screen, select and hire contractors, employees, or other persons to perform services at the facility who due to want of skill and/or prudence, were incompetent to perform these services;

(g) Failing to promulgate, implement, or enforce rules and regulations to prevent or respond to a hazardous substance emergency;

(h) Failing to adequately prepare, plan, equip, or train for the possibility of such a chemical release at the Gaylord facility;

(i) Failing to properly warn plaintiffs of the impending emergency;

(j) Failing to abide by various federal, state and local laws and regulations governing the storage, handling, transportation, reporting, and/or use of toxic or hazardous chemicals such as nitrogen tetroxide, constituting negligence *per se*;

(k) Failing to abide by and/or implement various industry-wide and/or internal company safety and occupational standards and procedures governing the storage, handling, transportation, reporting, and/or use of toxic or hazardous chemicals such as nitrogen tetroxide;

(l) Failing to formulate and/or facilitate a coherent emergency response plan under the circumstances;

(m) Any and all other acts of negligent fault which may be proven at the trial of the merits herein.

41.

Defendant KCSR is liable to plaintiffs and other persons or entities similarly situated for negligence, imprudence, and want of skill in the identical non-exclusive particulars set forth above with reference to the defendant ICR, save for subparagraph (d) of paragraph 40.

42.

In addition, the defendant KCSR is liable to plaintiffs for accepting, shipping, and turning over to ICR, a railroad tank car in an overweight and/or defective condition.

(D) STRICT LIABILITY UNDER ARTICLES 2317, 2322, AND 667-669

43.

Defendants GC, GCC, VC, CC, UT, ICR, KCSR, NWC, TRJ, and TPRI, are strictly liable to plaintiffs and all persons and entities similarly situated, for all injuries and damages caused by the railroad tank car, since at various times pertinent herein, the railroad car, and/or the nitrogen tetroxide and other chemicals it contained, were unreasonably dangerous things in the care, custody, and/or control of each and all of these defendants, within the meaning of Article 2317 of the Louisiana Civil Code.

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44.

The Gaylord facility, including the processing unit, premises, appurtenances, fixtures, and components, were owned and/or operated by GC or GCC.

45.

Defendants GC and GCC are strictly liable to plaintiffs and all persons and entities similarly situated, for all injuries and damages caused by the Gaylord facility, including the mobile tank(s), processing unit, premises, appurtenances, fixtures, and components, since, at all times pertinent herein, the Gaylord facility was an unreasonably dangerous thing in the care, custody, and/or control of these defendants, within the meaning of Article 2317 of the Louisiana Civil Code.

46.

The premises, appurtenances, fixtures, and components of the Gaylord facility, including the processing unit involved in this occurrence, were defective, in disrepair, and/or in ruin at various times pertinent herein, which caused or contributed to plaintiffs' damages and injuries, thus making GC and GCC liable to plaintiffs and other persons and entities pursuant to Article 2322.

47.

Defendants GC, GCC, VC, CC, UT, ICR, KCSR, NWC, TRI, and TPRI, are strictly and/or absolutely liable to plaintiffs and all other persons and entities similarly situated, for all damages sustained as a result of the unauthorized leaks of toxic

and hazardous vapors, fumes, and chemical materials, inasmuch as same wrongfully entered onto the property of plaintiffs in violation of Article 667-669 of the Louisiana Civil Code. These defendants are liable jointly, severally, and in *solido*, for damages associated with the nuisance and/or trespass occurring as a result of the foregoing.

(E) ABSOLUTE LIABILITY

48.

At all times pertinent herein, defendants GC, GCC, VC, CC, UT, ICR, KCSR, NWC, TRI, and TPRI, engaged in ultrahazardous activity within the meaning of Louisiana law, to-wit: activity which can cause injury to others, such as the handling, transportation and/or storage of toxic gas, and in which the risk, even if reasonable, is high enough such that the activity may not be undertaken by these defendants without assuming responsibility for the consequences of any resulting harm to plaintiffs and those similarly situated.

49.

Plaintiffs and other persons and entities similarly situated suffered damages and injuries caused by defendants' ultrahazardous activities. Accordingly, each and all of these defendants is/are absolutely liable for these damages and injuries.

* * * *